



ARIZONA STATE SENATE
Fifty-Sixth Legislature, First Regular Session

VETOED

FACT SHEET FOR H.B. 2056

dry washes; permit program exemption

Purpose

Exempts a dry wash, arroyo, swale, gully or rill or other similar erosional feature that is characterized by low volume, infrequent or short duration flows from the Dredge and Fill Permit Program (Permit Program).

Background

The federal Clean Water Act (CWA) was created to eliminate discharge of pollutants into navigable waters. Within the CWA, the Army Corps of Engineers (Army) administers the Permit Program. The Permit Program regulates, through permits, dredge or fill discharges into waters of the United States (*WOTUS*) ([EPA](#)). To obtain a permit, the Secretary of the Army must verify there has been notice and a chance for public hearings on the matter and that the dredge or fill activities would not adversely affect the environment or other water supplies ([33 U.S.C. § 1344](#)).

As of January 18, 2023, the U.S. Environmental Protection Agency (EPA) provided a finalized ruling on the scope of the definition of *WOTUS* as provided in the CWA ([88 F.R. 3004](#)). Effective March 20, 2023, *WOTUS* are jurisdictional waters including tributaries, lakes, ponds, adjacent wetlands and territorial seas and waters which are currently used or were used in the past or may be susceptible to use in interstate or foreign commerce ([40 C.F.R. § 120.2](#)). The new definition excludes erosional features like swales, washes and gullies characterized by low volume, infrequent or short duration flow ([88 F.R. 3144](#)).

Waters of the state are all waters within the jurisdiction of Arizona, including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems, drainage systems and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state of Arizona. *Protected surface waters* are waters of the state open to or managed for use by members of the general public ([A.R.S. § 49-201](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Exempts a dry wash, arroyo, swale, gully or rill or other similar erosional feature that is characterized by low volume, infrequent or short duration flows from the:
 - a) Permit Program; and
 - b) definitions of *waters of the state*, *WOTUS* and *protected surface waters*.

2. Makes technical and confirming changes.
3. Becomes effective on the general effective date.

Governor's Veto Message

The Governor indicates in her [veto message](#) that H.B. 2056 creates regulatory confusion and uncertainty by forcing an unnecessary conflict between state law and the federal determination of WOTUS.

House Action

Senate Action

NREW	1/24/23	DP	5-4-0-1	NREW	3/16/23	4-3-0
3 rd Read	2/28/23		31-26-3	3 rd Read	3/28/23	16-13-1

Vetoed by the Governor 4/3/23

Prepared by Senate Research
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RA/SF/slp